

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. COOK
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

13 **RACHEL ASTORGA**
14 **836 27th Street**
San Diego, CA 92102

15 **Pharmacy Technician Registration No. TCH**
16 **69636**

17 Respondent.

Case No. 3993

A C C U S A T I O N

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about June 6, 2006, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 69636 to Rachel Astorga (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on August 31, 2011, unless renewed.

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[illegible]

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

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1 8. Section 4060 of the Code states:

2 No person shall possess any controlled substance, except that furnished to a
3 person upon the prescription of a physician, dentist, podiatrist, optometrist,
4 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
5 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
6 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
7 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
8 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
9 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
 section shall not apply to the possession of any controlled substance by a
 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
 practitioner, or physician assistant, when in stock in containers correctly labeled
 with the name and address of the supplier or producer.

10 Nothing in this section authorizes a certified nurse-midwife, a nurse
11 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
12 stock of dangerous drugs and devices.

13 9. Section 4301 of the Code states:

14 The board shall take action against any holder of a license who is guilty of
15 unprofessional conduct or whose license has been procured by fraud or
16 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
 is not limited to, any of the following:

17

18 (h) The administering to oneself, of any controlled substance, or the use of
19 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
20 dangerous or injurious to oneself, to a person holding a license under this chapter,
 or to any other person or to the public, or to the extent that the use impairs the
 ability of the person to conduct with safety to the public the practice authorized by
 the license.

21

22 (j) The violation of any of the statutes of this state, or any other state, or of
23 the United States regulating controlled substances and dangerous drugs.

24

25 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
26 abetting the violation of or conspiring to violate any provision or term of this
27 chapter or of the applicable federal and state laws and regulations governing
 pharmacy, including regulations established by the board or by any other state or
 federal regulatory agency.

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1 10. Health and Safety Code section 11350 provides that every person who possesses a
2 controlled substance, unless upon the prescription of a physician, dentist, podiatrist, or
3 veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state
4 prison.

5 11. Health and Safety Code section 11364(a) states:

6 It is unlawful to possess an opium pipe or any device, contrivance,
7 instrument, or paraphernalia used for unlawfully injecting or smoking (1) a
8 controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of
9 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
10 subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section
11 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a
12 controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

13 12. Health and Safety Code section 11377 states:

14 (a) Except as authorized by law and as otherwise provided in subdivision
15 (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9
16 of Division 2 of the Business and Professions Code, every person who possesses
17 any controlled substance which is (1) classified in Schedule III, IV, or V, and
18 which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054,
19 except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in
20 paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
21 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e),
22 or (f) of Section 11055, unless upon the prescription of a physician, dentist,
23 podiatrist, or veterinarian, licensed to practice in this state, shall be punished by
24 imprisonment in a county jail for a period of not more than one year or in the state
25 prison.

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27 13. Health and Safety Code section 11550 states:

28 (a) No person shall use, or be under the influence of any controlled
substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of
subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or
(23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of
Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in
paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified
in Schedule III, IV, or V, except when administered by or under the direction of a
person licensed by the state to dispense, prescribe, or administer controlled
substances. It shall be the burden of the defense to show that it comes within the
exception. Any person convicted of violating this subdivision is guilty of a
misdemeanor and shall be sentenced to serve a term of not less than 90 days or
more than one year in a county jail. The court may place a person convicted under
this subdivision on probation for a period not to exceed five years and, except as

provided in subdivision (c), shall in all cases in which probation is granted require, as a condition thereof, that the person be confined in a county jail for at least 90 days. Other than as provided by subdivision (c), in no event shall the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUG

15. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

16. On or about March 31, 2010 at approximately 7:13 p.m., officers from the San Diego Police Department interviewed Respondent and two other individuals in Golden Hill Park. An officer observed Respondent sitting on a grassy area south of the baseball fields next to a male. A glass smoking pipe with a white crystalline residue inside the top of it was located on the grass next to Respondent's left side. The officer asked Respondent if the pipe belonged to her. Respondent admitted that it did stating, "Well, yes... I guess it is." When asked if she had used the pipe to smoke methamphetamine, Respondent hesitated and replied, "yes." Respondent was placed under arrest and questioned further by the officer. Respondent admitted to the officer that she smoked methamphetamine occasionally and that she had used the pipe to smoke methamphetamine that day approximately 8 hours prior. Respondent stated that the male individual had given her the methamphetamine earlier while at Golden Hill Park, that she usually does not carry a pipe around her, and that she made a big mistake by smoking it that day. Respondent stated that she was under stress from work and school.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct- Use of Dangerous Drug in Manner Dangerous to Oneself)**

3 17. Respondent is subject to disciplinary action under section 4301(h) of the Code in
4 that she used methamphetamine to the extent or in a manner as to be dangerous to herself or
5 others as evidenced by Respondent's admissions set forth in paragraph 16, above.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

8 18. Respondent is subject to disciplinary action under section 4301(j) of the Code in
9 that she violated the California Uniform Controlled Substances Act (Health and Safety Code
10 11000, et seq.) by possessing and using methamphetamine, and by possessing controlled
11 substance paraphernalia, as evidenced by Respondent's admissions set forth in paragraph 16,
12 above.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Violations of the Chapter)**

15 19. Respondent is subject to disciplinary action under Code section 4301(o) for violation
16 of the Pharmacy Act in that on or about March 31, 2010, Respondent used and possessed a
17 controlled substance, methamphetamine, in violation of Code section 4060 as evidenced by
18 Respondent's admissions set forth in paragraph 16, above.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Board of Pharmacy issue a decision:

22 1. Revoking or suspending Pharmacy Technician Registration Number TCH 69636,
23 issued to Rachel Astorga;

24 2. Ordering Rachel Astorga to pay the Board of Pharmacy the reasonable costs of the
25 investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 4/5/11 Virginia Herold

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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